

REMARKS/ARGUMENTS

This is a reply to the Office Action dated October 1, 2007.

Status of Claims

Claims 1, 2, 4, 5, 6, and 8 are currently pending in this application. Claims 3, 7 and 9-14 have been canceled. No new claims are added at this time. Claims 1, 2, 4, 5, 6 and 8 are currently amended.

Amendments Discussion

In the amendment, claims 1, 2, 4, 5, 6, and 8 delete the term "single use". In claims 1, 4 and 5 (lines 1-3), the transitional term "comprising" is replaced with "consisting essentially of." Also, in claims 1, 4 and 5, editorial amendments are made for consistent use of the terminology "cationic dual quaternary ammonia anti-microbial agent" throughout the claims.

No new matter has been introduced.

Obviousness Double Patenting Rejection

Claims 1-6, 8 and 9 have been provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 of copending Application no. 10/762,945. As indicated in the most recent Office Action, if either of these applications is deemed allowable, then the double patenting rejection will be withdrawn for the first to be allowed, however until then they shall be maintained.

The applicants again traverse this rejection.

As previously explained, the applicants submit that the currently amended claims of the present application would not be obvious over the recently amended claims of the copending Application no. 10/762,945, if the latter were patented. The present amended claims recite, *inter alia*, a nonwoven anti-microbial wipe comprising a nonwoven treated with a non-ionic binder, or a non-ionic and cationic binder mixture, and a cationic dual quaternary ammonia anti-microbial agent, while the amended claims of copending Application no. 10/762,945 recite, *inter alia*, a nonwoven treated with an anionic binder and an anionic dual quaternary ammonia, potassium iodide, or sodium hypochloride antimicrobial agent. Therefore, the presently amended claims would not be obvious over the amended claims of said copending application, if patented. The applicants also respectfully submit that the most recent Office Action does not set forth sufficient facts or reasoning that might bring into question the above-identified differences or significance

thereof.

For these reasons, it is respectfully submitted that this provisional rejection should be withdrawn.

Written Description Rejection

Claims 1, 2, 4, 5, 6 and 8 have been rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

The Patent Office is understood to take the position that the terminology of “single use,” which was added to the claims in the previous amendment, lacks proper support.

The applicants kindly disagree, as the present disclosure as a whole, in context, reveals what the applicants had in mind as their invention, and the previous set of claims including the “single use” term reflected that possession. As explained within the four corners of the present application as filed, the applicants have developed an antimicrobial wipe that readily releases a disinfectant or anti-microbial agent for limited and single use applications to prevent build-up of bacteria that otherwise tends to accumulate within a standing damp wipe.

In any event, applicants are retracting the term in question from the claims in the above amendment, and this rejection should be moot. Again, this amendment raises no new issues, as the originally recited claims were initially examined in the absence of this term.

Indefiniteness Rejection

Claims 1, 2, 4, 5, 6 and 8 have been rejected under 35 USC § 112, second paragraph, for indefiniteness.

The Patent Office appears to suggest that the applicants’ argument for distinguishing Radwanski et al. (U.S. Pat. No. 6,734,157) hinges on the fact the reference teaches multiple uses of the wipe, and the wipe of the present invention does not. The Patent Office also further suggests that the wipes of Radwanski and those of the invention as presently claimed structurally appear to be the same. According to the Patent Office, the applicants’ claims do not to recite any special abrasion resistance or what makes their composite any different than that shown in Radwanski et al. The Patent Office questions: “How does a skilled artisan quantify this?”, and requests that the applicants clarify. The applicants respectfully traverse this rejection for the following reasons.

The appropriate test for definiteness under 35 U.S.C. § 112, second paragraph, is whether “those skilled in the art would understand what is claimed when the claim is read in light of the specification.” *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576, 1 USPQ2d 1081, 1088 (Fed. Cir. 1986)(citations omitted). Further, a claim may be invalid for indefiniteness if it is “insolubly ambiguous” and not “amenable to construction.” *Exxon Research & Eng’g Co. v. United States*, 265 F.3d 1371, 1375, 60 USPQ2d 1272, 1276 (Fed. Cir. 2001). It also deserves mentioning that breadth *per se* is not indefiniteness. *In re Robins*, 166 USPQ 552 (CCPA 1970).

The present claims, when read in light of the specification, clearly recite definite and concrete boundaries of the patent protection being sought that would be understood by those skilled in the art. In fact, the present claims are readily amenable to construction and are not “insolubly ambiguous.”

First of all, the applicants *have* recited in their claims at least one clear-cut distinction from Radwanski et al. — A nonwoven anti-microbial wipe consisting essentially of a fibrous nonwoven substrate treated with a **non-ionic** binder and a **cationic** dual quaternary ammonia anti-microbial agent. See claims 1 and 5. Claim 4 has similar recitations to claim 1 with variations from claim 1 in reciting a nonwoven anti-microbial *laminate* wipe consisting essentially of a fibrous nonwoven substrate treated with a **non-ionic and cationic** binder mixture, which is combined with the **cationic** dual quaternary ammonia anti-microbial agent, and so forth. The transitional term “consisting essentially of” recited in present claims 1, 4 and 5 has the legal effect of closing off the claims to the inclusion of any unrecited components that would change the basic and novel characteristics of the present invention.

In this respect, the presently claimed invention is related to a nonwoven anti-microbial wipe consisting essentially of a nonwoven substrate comprised of a *non-ionic* binder, or a *non-ionic* and *cationic* binder mixture, and a *cationic* dual quaternary ammonia anti-microbial agent that is readily released upon being introduced to a water source. As explained in the present application, the wipe comprised of a non-ionic binder, or a non-ionic and cationic binder mixture, has a low affinity for a cationic disinfecting solution and the weak bonds formed between the binder and disinfectant are easily broken. The resulting wipe more readily releases the disinfectant into a water source and will not attract and retain a charged disinfectant that could possibly prematurely deplete the effectiveness of a sanitizing solution.

By contrast, Radwanski et al. generally refer to “soluble binders” as used to “modulate the controlled release properties of the anti-microbial agent” (col. 3, lines 55-58) of the wiper taught therein, but Radwanski et al. does not teach that the binder is a binder material that is cationic in charge. Further, there is no factual evidence of record showing that any binder materials disclosed by Radwanski et al. are inevitably cationic materials. With respect to anti-microbial agents, Radwanski et al. generally refer to quaternary amines but does not state that they are dual quaternary ammonia that are either anionic and cationic, in charge (col. 3, lines 38-39, col. 8, lines 1-2). The applicants point out that the charge of quaternary amines can vary between anionic or cationic types thereof, as understood by those skilled in the art.

Further, conceptually, Radwanski et al. do not reveal any recognition of the possible importance of selecting the charge of any binder used relative to that of any antimicrobial agent used in the Radwanski wiper. Indeed, if they had, for sake of argument only and such as if they had been exposed to the insights of the present application, they presumably would have picked *opposite* charges for the binder and antimicrobial agent consistent with their stated objective of providing *controlled release* of antimicrobial agent after *repeated* washing and rinsing operations.

Attention is also kindly directed to the concurrently submitted Rule 132 Declaration of co-inventor Dianne Ellis (the “Ellis Declaration”). The Ellis Declaration provides expert technical opinion and assessment of the wiper teachings of Radwanski, and as compared to the wipes of the present invention. The Ellis Declaration technically explains, among other things, how Radwanski et al. fails to teach a nonwoven anti-microbial wipe constructed with a fibrous nonwoven substrate coated with a non-ionic binder or non-ionic/cationic binder mixture and subsequently coated with a cationic dual quaternary ammonia anti-microbial agent, nor such a construction that is adapted to readily release an anti-microbial agent upon being introduced to an associated water source. Again, and as discussed in the Ellis Declaration, Radwanski et al. actually teaches an opposite type of wiper configuration should be provided that ensures controlled release of antimicrobial agent over repeated washing and rinsing operations.

As can be appreciated from the above, the applicants should not need to quantify special abrasion resistance or some other parameter interjected into these discussions because the present claims already define one or more concrete distinction(s) with respect to Radwanski et al.

In view of at least the above reasons, the applicants submit that the present claims particularly point out and distinctly claim the subject matter which the applicants regard as their invention, and this rejection should be withdrawn.

The present claims are also patentably distinguishable from the disclosures of Radwanski et al. in view of at least the reasons set forth above.

Reconsideration and withdrawal of this rejection is respectfully requested.

It is believed that this application is in condition for allowance, and notice of such is respectfully requested.

If the Examiner believes that a teleconference would be useful in expediting the prosecution of this application, the official is kindly invited to contact the applicants' representative of record indicated below.

Respectfully submitted,

/Ramon R. Hoch/
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